

AMENDED IN SENATE APRIL 28, 2014

**SENATE BILL**

**No. 1284**

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**Introduced by Senator Galgiani**

February 21, 2014

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An act to amend Sections 1170 and 3550 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as amended, Galgiani. Parole: medical parole: compassionate release.

Existing law provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority. Existing law requires that a prisoner who is found to be permanently medically incapacitated, as specified, be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Existing law exempts a prisoner sentenced to death, a prisoner sentenced to life without the possibility of parole, and a prisoner who is serving a sentence for which parole is prohibited by initiative statute, from medical parole eligibility.

Existing law authorizes a court to resentence or recall the sentence of a prisoner if the court finds that the prisoner is terminally ill, as specified, or the prisoner is permanently medically incapacitated, as specified, and, in either case, the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety. Existing law exempts a prisoner sentenced to death or a term of life without the possibility of parole from eligibility for compassionate release pursuant to these ~~provisions~~ *provisions*.

This bill would additionally exempt from medical parole eligibility and compassionate release eligibility a prisoner who was convicted of the *first degree* murder of a peace officer, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1170 of the Penal Code, as amended by  
2 Section 5 of Chapter 508 of the Statutes of 2013, is amended to  
3 read:

4 1170. (a) (1) The Legislature finds and declares that the  
5 purpose of imprisonment for crime is punishment. This purpose  
6 is best served by terms proportionate to the seriousness of the  
7 offense with provision for uniformity in the sentences of offenders  
8 committing the same offense under similar circumstances. The  
9 Legislature further finds and declares that the elimination of  
10 disparity and the provision of uniformity of sentences can best be  
11 achieved by determinate sentences fixed by statute in proportion  
12 to the seriousness of the offense as determined by the Legislature  
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds  
15 and declares that programs should be available for inmates,  
16 including, but not limited to, educational programs, that are  
17 designed to prepare nonviolent felony offenders for successful  
18 reentry into the community. The Legislature encourages the  
19 development of policies and programs designed to educate and  
20 rehabilitate nonviolent felony offenders. In implementing this  
21 section, the Department of Corrections and Rehabilitation is  
22 encouraged to give priority enrollment in programs to promote  
23 successful return to the community to an inmate with a short  
24 remaining term of commitment and a release date that would allow  
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute  
27 for a person convicted of a public offense is a term of imprisonment  
28 in the state prison of any specification of three time periods, the  
29 court shall sentence the defendant to one of the terms of  
30 imprisonment specified unless the convicted person is given any  
31 other disposition provided by law, including a fine, jail, probation,  
32 or the suspension of imposition or execution of sentence or is

1 sentenced pursuant to subdivision (b) of Section 1168 because he  
2 or she had committed his or her crime prior to July 1, 1977. In  
3 sentencing the convicted person, the court shall apply the  
4 sentencing rules of the Judicial Council. The court, unless it  
5 determines that there are circumstances in mitigation of the  
6 punishment prescribed, shall also impose any other term that it is  
7 required by law to impose as an additional term. Nothing in this  
8 article shall affect any provision of law that imposes the death  
9 penalty, that authorizes or restricts the granting of probation or  
10 suspending the execution or imposition of sentence, or expressly  
11 provides for imprisonment in the state prison for life, except as  
12 provided in paragraph (2) of subdivision (d). In any case in which  
13 the amount of preimprisonment credit under Section 2900.5 or any  
14 other provision of law is equal to or exceeds any sentence imposed  
15 pursuant to this chapter, the entire sentence shall be deemed to  
16 have been served and the defendant shall not be actually delivered  
17 to the custody of the secretary. The court shall advise the defendant  
18 that he or she shall serve a period of parole and order the defendant  
19 to report to the parole office closest to the defendant's last legal  
20 residence, unless the in-custody credits equal the total sentence,  
21 including both confinement time and the period of parole. The  
22 sentence shall be deemed a separate prior prison term under Section  
23 667.5, and a copy of the judgment and other necessary  
24 documentation shall be forwarded to the secretary.

25 (b) When a judgment of imprisonment is to be imposed and the  
26 statute specifies three possible terms, the choice of the appropriate  
27 term shall rest within the sound discretion of the court. At least  
28 four days prior to the time set for imposition of judgment, either  
29 party or the victim, or the family of the victim if the victim is  
30 deceased, may submit a statement in aggravation or mitigation. In  
31 determining the appropriate term, the court may consider the record  
32 in the case, the probation officer's report, other reports, including  
33 reports received pursuant to Section 1203.03, and statements in  
34 aggravation or mitigation submitted by the prosecution, the  
35 defendant, or the victim, or the family of the victim if the victim  
36 is deceased, and any further evidence introduced at the sentencing  
37 hearing. The court shall select the term which, in the court's  
38 discretion, best serves the interests of justice. The court shall set  
39 forth on the record the reasons for imposing the term selected and  
40 the court may not impose an upper term by using the fact of any

1 enhancement upon which sentence is imposed under any provision  
2 of law. A term of imprisonment shall not be specified if imposition  
3 of sentence is suspended.

4 (c) The court shall state the reasons for its sentence choice on  
5 the record at the time of sentencing. The court shall also inform  
6 the defendant that as part of the sentence after expiration of the  
7 term he or she may be on parole for a period as provided in Section  
8 3000.

9 (d) (1) When a defendant subject to this section or subdivision  
10 (b) of Section 1168 has been sentenced to be imprisoned in the  
11 state prison and has been committed to the custody of the secretary,  
12 the court may, within 120 days of the date of commitment on its  
13 own motion, or at any time upon the recommendation of the  
14 secretary or the Board of Parole Hearings, recall the sentence and  
15 commitment previously ordered and resentence the defendant in  
16 the same manner as if he or she had not previously been sentenced,  
17 provided the new sentence, if any, is no greater than the initial  
18 sentence. The court resentencing under this subdivision shall apply  
19 the sentencing rules of the Judicial Council so as to eliminate  
20 disparity of sentences and to promote uniformity of sentencing.  
21 Credit shall be given for time served.

22 (2) (A) (i) When a defendant who was under 18 years of age  
23 at the time of the commission of the offense for which the  
24 defendant was sentenced to imprisonment for life without the  
25 possibility of parole has served at least 15 years of that sentence,  
26 the defendant may submit to the sentencing court a petition for  
27 recall and resentencing.

28 (ii) Notwithstanding clause (i), this paragraph shall not apply  
29 to defendants sentenced to life without parole for an offense where  
30 the defendant tortured, as described in Section 206, his or her  
31 victim or the victim was a public safety official, including any law  
32 enforcement personnel mentioned in Chapter 4.5 (commencing  
33 with Section 830) of Title 3, or any firefighter as described in  
34 Section 245.1, as well as any other officer in any segment of law  
35 enforcement who is employed by the federal government, the state,  
36 or any of its political subdivisions.

37 (B) The defendant shall file the original petition with the  
38 sentencing court. A copy of the petition shall be served on the  
39 agency that prosecuted the case. The petition shall include the  
40 defendant's statement that he or she was under 18 years of age at

1 the time of the crime and was sentenced to life in prison without  
2 the possibility of parole, the defendant's statement describing his  
3 or her remorse and work towards rehabilitation, and the defendant's  
4 statement that one of the following is true:

5 (i) The defendant was convicted pursuant to felony murder or  
6 aiding and abetting murder provisions of law.

7 (ii) The defendant does not have juvenile felony adjudications  
8 for assault or other felony crimes with a significant potential for  
9 personal harm to victims prior to the offense for which the sentence  
10 is being considered for recall.

11 (iii) The defendant committed the offense with at least one adult  
12 codefendant.

13 (iv) The defendant has performed acts that tend to indicate  
14 rehabilitation or the potential for rehabilitation, including, but not  
15 limited to, availing himself or herself of rehabilitative, educational,  
16 or vocational programs, if those programs have been available at  
17 his or her classification level and facility, using self-study for  
18 self-improvement, or showing evidence of remorse.

19 (C) If any of the information required in subparagraph (B) is  
20 missing from the petition, or if proof of service on the prosecuting  
21 agency is not provided, the court shall return the petition to the  
22 defendant and advise the defendant that the matter cannot be  
23 considered without the missing information.

24 (D) A reply to the petition, if any, shall be filed with the court  
25 within 60 days of the date on which the prosecuting agency was  
26 served with the petition, unless a continuance is granted for good  
27 cause.

28 (E) If the court finds by a preponderance of the evidence that  
29 the statements in the petition are true, the court shall hold a hearing  
30 to consider whether to recall the sentence and commitment  
31 previously ordered and to resentence the defendant in the same  
32 manner as if the defendant had not previously been sentenced,  
33 provided that the new sentence, if any, is not greater than the initial  
34 sentence. Victims, or victim family members if the victim is  
35 deceased, shall retain the rights to participate in the hearing.

36 (F) The factors that the court may consider when determining  
37 whether to recall and resentence include, but are not limited to,  
38 the following:

39 (i) The defendant was convicted pursuant to felony murder or  
40 aiding and abetting murder provisions of law.

1 (ii) The defendant does not have juvenile felony adjudications  
2 for assault or other felony crimes with a significant potential for  
3 personal harm to victims prior to the offense for which the sentence  
4 is being considered for recall.

5 (iii) The defendant committed the offense with at least one adult  
6 codefendant.

7 (iv) Prior to the offense for which the sentence is being  
8 considered for recall, the defendant had insufficient adult support  
9 or supervision and had suffered from psychological or physical  
10 trauma, or significant stress.

11 (v) The defendant suffers from cognitive limitations due to  
12 mental illness, developmental disabilities, or other factors that did  
13 not constitute a defense, but influenced the defendant's  
14 involvement in the offense.

15 (vi) The defendant has performed acts that tend to indicate  
16 rehabilitation or the potential for rehabilitation, including, but not  
17 limited to, availing himself or herself of rehabilitative, educational,  
18 or vocational programs, if those programs have been available at  
19 his or her classification level and facility, using self-study for  
20 self-improvement, or showing evidence of remorse.

21 (vii) The defendant has maintained family ties or connections  
22 with others through letter writing, calls, or visits, or has eliminated  
23 contact with individuals outside of prison who are currently  
24 involved with crime.

25 (viii) The defendant has had no disciplinary actions for violent  
26 activities in the last five years in which the defendant was  
27 determined to be the aggressor.

28 (G) The court shall have the discretion to recall the sentence  
29 and commitment previously ordered and to resentence the  
30 defendant in the same manner as if the defendant had not  
31 previously been sentenced, provided that the new sentence, if any,  
32 is not greater than the initial sentence. The discretion of the court  
33 shall be exercised in consideration of the criteria in subparagraph  
34 (B). Victims, or victim family members if the victim is deceased,  
35 shall be notified of the resentencing hearing and shall retain their  
36 rights to participate in the hearing.

37 (H) If the sentence is not recalled, the defendant may submit  
38 another petition for recall and resentencing to the sentencing court  
39 when the defendant has been committed to the custody of the  
40 department for at least 20 years. If recall and resentencing is not

1 granted under that petition, the defendant may file another petition  
2 after having served 24 years. The final petition may be submitted,  
3 and the response to that petition shall be determined, during the  
4 25th year of the defendant's sentence.

5 (I) In addition to the criteria in subparagraph (F), the court may  
6 consider any other criteria that the court deems relevant to its  
7 decision, so long as the court identifies them on the record,  
8 provides a statement of reasons for adopting them, and states why  
9 the defendant does or does not satisfy the criteria.

10 (J) This subdivision shall have retroactive application.

11 (e) (1) Notwithstanding any other law and consistent with  
12 paragraph (1) of subdivision (a), if the secretary or the Board of  
13 Parole Hearings or both determine that a prisoner satisfies the  
14 criteria set forth in paragraph (2), the secretary or the board may  
15 recommend to the court that the prisoner's sentence be recalled.

16 (2) (A) The court shall have the discretion to resentence or  
17 recall if the court finds that the facts described in clauses (i) and  
18 (ii) or clauses (ii) and (iii) exist:

19 (i) The prisoner is terminally ill with an incurable condition  
20 caused by an illness or disease that would produce death within  
21 six months, as determined by a physician employed by the  
22 department.

23 (ii) The conditions under which the prisoner would be released  
24 or receive treatment do not pose a threat to public safety.

25 (iii) The prisoner is permanently medically incapacitated with  
26 a medical condition that renders him or her permanently unable  
27 to perform activities of basic daily living, and results in the prisoner  
28 requiring 24-hour total care, including, but not limited to, coma,  
29 persistent vegetative state, brain death, ventilator-dependency, loss  
30 of control of muscular or neurological function, and that  
31 incapacitation did not exist at the time of the original sentencing.

32 (B) This subdivision does not apply to the following:

33 (i) A prisoner sentenced to death or a term of life without the  
34 possibility of parole.

35 (ii) (I) A prisoner who was convicted of *first degree* murder if  
36 the victim was a peace officer, as defined in Section 830.1, 830.2,  
37 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,  
38 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed  
39 while engaged in the performance of his or her duties, and the

1 individual knew, or reasonably should have known, that the victim  
2 was a peace officer engaged in the performance of his or her duties.

3 (II) The victim was a peace officer, as defined in any of the  
4 sections enumerated in subclause (I), or had been a peace officer,  
5 as defined in any of those sections, and was intentionally murdered  
6 in retaliation for the performance of his or her official duties.

7 (III) If the court determines that the application of this clause  
8 violates the ex post facto clauses of the United States Constitution  
9 or the California Constitution, the court shall only enforce its  
10 provisions prospectively.

11 (C) The Board of Parole Hearings shall make findings pursuant  
12 to this subdivision before making a recommendation for resentence  
13 or recall to the court.

14 (3) Within 10 days of receipt of a positive recommendation by  
15 the secretary or the board, the court shall hold a hearing to consider  
16 whether the prisoner's sentence should be recalled.

17 (4) Any physician employed by the department who determines  
18 that a prisoner has six months or less to live shall notify the chief  
19 medical officer of the prognosis. If the chief medical officer  
20 concurs with the prognosis, he or she shall notify the warden.  
21 Within 48 hours of receiving notification, the warden or the  
22 warden's representative shall notify the prisoner of the recall and  
23 resentencing procedures, and shall arrange for the prisoner to  
24 designate a family member or other outside agent to be notified  
25 as to the prisoner's medical condition and prognosis, and as to the  
26 recall and resentencing procedures. If the inmate is deemed  
27 mentally unfit, the warden or the warden's representative shall  
28 contact the inmate's emergency contact and provide the information  
29 described in paragraph (2).

30 (5) The warden or the warden's representative shall provide the  
31 prisoner and his or her family member, agent, or emergency  
32 contact, as described in paragraph (4), updated information  
33 throughout the recall and resentencing process with regard to the  
34 prisoner's medical condition and the status of the prisoner's recall  
35 and resentencing proceedings.

36 (6) Notwithstanding any other provisions of this section, the  
37 prisoner or his or her family member or designee may  
38 independently request consideration for recall and resentencing  
39 by contacting the chief medical officer at the prison or the  
40 secretary. Upon receipt of the request, the chief medical officer



1 and the warden or the warden's representative shall follow the  
2 procedures described in paragraph (4). If the secretary determines  
3 that the prisoner satisfies the criteria set forth in paragraph (2), the  
4 secretary or board may recommend to the court that the prisoner's  
5 sentence be recalled. The secretary shall submit a recommendation  
6 for release within 30 days in the case of inmates sentenced to  
7 determinate terms and, in the case of inmates sentenced to  
8 indeterminate terms, the secretary shall make a recommendation  
9 to the Board of Parole Hearings with respect to the inmates who  
10 have applied under this section. The board shall consider this  
11 information and make an independent judgment pursuant to  
12 paragraph (2) and make findings related thereto before rejecting  
13 the request or making a recommendation to the court. This action  
14 shall be taken at the next lawfully noticed board meeting.

15 (7) Any recommendation for recall submitted to the court by  
16 the secretary or the Board of Parole Hearings shall include one or  
17 more medical evaluations, a postrelease plan, and findings pursuant  
18 to paragraph (2).

19 (8) If possible, the matter shall be heard before the same judge  
20 of the court who sentenced the prisoner.

21 (9) If the court grants the recall and resentencing application,  
22 the prisoner shall be released by the department within 48 hours  
23 of receipt of the court's order, unless a longer time period is agreed  
24 to by the inmate. At the time of release, the warden or the warden's  
25 representative shall ensure that the prisoner has each of the  
26 following in his or her possession: a discharge medical summary,  
27 full medical records, state identification, parole medications, and  
28 all property belonging to the prisoner. After discharge, any  
29 additional records shall be sent to the prisoner's forwarding  
30 address.

31 (10) The secretary shall issue a directive to medical and  
32 correctional staff employed by the department that details the  
33 guidelines and procedures for initiating a recall and resentencing  
34 procedure. The directive shall clearly state that any prisoner who  
35 is given a prognosis of six months or less to live is eligible for  
36 recall and resentencing consideration, and that recall and  
37 resentencing procedures shall be initiated upon that prognosis.

38 (f) Notwithstanding any other provision of this section, for  
39 purposes of paragraph (3) of subdivision (h), any allegation that  
40 a defendant is eligible for state prison due to a prior or current

1 conviction, sentence enhancement, or because he or she is required  
2 to register as a sex offender shall not be subject to dismissal  
3 pursuant to Section 1385.

4 (g) A sentence to state prison for a determinate term for which  
5 only one term is specified, is a sentence to state prison under this  
6 section.

7 (h) (1) Except as provided in paragraph (3), a felony punishable  
8 pursuant to this subdivision where the term is not specified in the  
9 underlying offense shall be punishable by a term of imprisonment  
10 in a county jail for 16 months, or two or three years.

11 (2) Except as provided in paragraph (3), a felony punishable  
12 pursuant to this subdivision shall be punishable by imprisonment  
13 in a county jail for the term described in the underlying offense.

14 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
15 (A) has a prior or current felony conviction for a serious felony  
16 described in subdivision (c) of Section 1192.7 or a prior or current  
17 conviction for a violent felony described in subdivision (c) of  
18 Section 667.5, (B) has a prior felony conviction in another  
19 jurisdiction for an offense that has all the elements of a serious  
20 felony described in subdivision (c) of Section 1192.7 or a violent  
21 felony described in subdivision (c) of Section 667.5, (C) is required  
22 to register as a sex offender pursuant to Chapter 5.5 (commencing  
23 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
24 and as part of the sentence an enhancement pursuant to Section  
25 186.11 is imposed, an executed sentence for a felony punishable  
26 pursuant to this subdivision shall be served in state prison.

27 (4) Nothing in this subdivision shall be construed to prevent  
28 other dispositions authorized by law, including pretrial diversion,  
29 deferred entry of judgment, or an order granting probation pursuant  
30 to Section 1203.1.

31 (5) The court, when imposing a sentence pursuant to paragraph  
32 (1) or (2) of this subdivision, may commit the defendant to a county  
33 jail as follows:

34 (A) For a full term in custody as determined in accordance with  
35 the applicable sentencing law.

36 (B) (i) For a term as determined in accordance with the  
37 applicable sentencing law, but suspend execution of a concluding  
38 portion of the term selected in the court's discretion, during which  
39 time the defendant shall be supervised by the county probation  
40 officer in accordance with the terms, conditions, and procedures

1 generally applicable to persons placed on probation, for the  
2 remaining unserved portion of the sentence imposed by the court.  
3 The period of supervision shall be mandatory, and may not be  
4 earlier terminated except by court order. Any proceeding to revoke  
5 or modify mandatory supervision under this subparagraph shall  
6 be conducted pursuant to either subdivisions (a) and (b) of Section  
7 1203.2 or Section 1203.3. During the period when the defendant  
8 is under such supervision, unless in actual custody related to the  
9 sentence imposed by the court, the defendant shall be entitled to  
10 only actual time credit against the term of imprisonment imposed  
11 by the court. Any time period which is suspended because a person  
12 has absconded shall not be credited toward the period of  
13 supervision.

14 (ii) The portion of a defendant's sentenced term during which  
15 time he or she is supervised by the county probation officer  
16 pursuant to this subparagraph shall be known as mandatory  
17 supervision.

18 (6) The sentencing changes made by the act that added this  
19 subdivision shall be applied prospectively to any person sentenced  
20 on or after October 1, 2011.

21 (i) This section shall remain in effect only until January 1, 2017,  
22 and as of that date is repealed, unless a later enacted statute, that  
23 is enacted before that date, deletes or extends that date.

24 SEC. 2. Section 1170 of the Penal Code, as amended by Section  
25 6 of Chapter 508 of the Statutes of 2013, is amended to read:

26 1170. (a) (1) The Legislature finds and declares that the  
27 purpose of imprisonment for crime is punishment. This purpose  
28 is best served by terms proportionate to the seriousness of the  
29 offense with provision for uniformity in the sentences of offenders  
30 committing the same offense under similar circumstances. The  
31 Legislature further finds and declares that the elimination of  
32 disparity and the provision of uniformity of sentences can best be  
33 achieved by determinate sentences fixed by statute in proportion  
34 to the seriousness of the offense as determined by the Legislature  
35 to be imposed by the court with specified discretion.

36 (2) Notwithstanding paragraph (1), the Legislature further finds  
37 and declares that programs should be available for inmates,  
38 including, but not limited to, educational programs, that are  
39 designed to prepare nonviolent felony offenders for successful  
40 reentry into the community. The Legislature encourages the

1 development of policies and programs designed to educate and  
2 rehabilitate nonviolent felony offenders. In implementing this  
3 section, the Department of Corrections and Rehabilitation is  
4 encouraged to give priority enrollment in programs to promote  
5 successful return to the community to an inmate with a short  
6 remaining term of commitment and a release date that would allow  
7 him or her adequate time to complete the program.

8 (3) In any case in which the punishment prescribed by statute  
9 for a person convicted of a public offense is a term of imprisonment  
10 in the state prison of any specification of three time periods, the  
11 court shall sentence the defendant to one of the terms of  
12 imprisonment specified unless the convicted person is given any  
13 other disposition provided by law, including a fine, jail, probation,  
14 or the suspension of imposition or execution of sentence or is  
15 sentenced pursuant to subdivision (b) of Section 1168 because he  
16 or she had committed his or her crime prior to July 1, 1977. In  
17 sentencing the convicted person, the court shall apply the  
18 sentencing rules of the Judicial Council. The court, unless it  
19 determines that there are circumstances in mitigation of the  
20 punishment prescribed, shall also impose any other term that it is  
21 required by law to impose as an additional term. Nothing in this  
22 article shall affect any provision of law that imposes the death  
23 penalty, that authorizes or restricts the granting of probation or  
24 suspending the execution or imposition of sentence, or expressly  
25 provides for imprisonment in the state prison for life, except as  
26 provided in paragraph (2) of subdivision (d). In any case in which  
27 the amount of preimprisonment credit under Section 2900.5 or any  
28 other provision of law is equal to or exceeds any sentence imposed  
29 pursuant to this chapter, the entire sentence shall be deemed to  
30 have been served and the defendant shall not be actually delivered  
31 to the custody of the secretary. The court shall advise the defendant  
32 that he or she shall serve a period of parole and order the defendant  
33 to report to the parole office closest to the defendant's last legal  
34 residence, unless the in-custody credits equal the total sentence,  
35 including both confinement time and the period of parole. The  
36 sentence shall be deemed a separate prior prison term under Section  
37 667.5, and a copy of the judgment and other necessary  
38 documentation shall be forwarded to the secretary.

39 (b) When a judgment of imprisonment is to be imposed and the  
40 statute specifies three possible terms, the court shall order

1 imposition of the middle term, unless there are circumstances in  
2 aggravation or mitigation of the crime. At least four days prior to  
3 the time set for imposition of judgment, either party or the victim,  
4 or the family of the victim if the victim is deceased, may submit  
5 a statement in aggravation or mitigation to dispute facts in the  
6 record or the probation officer's report, or to present additional  
7 facts. In determining whether there are circumstances that justify  
8 imposition of the upper or lower term, the court may consider the  
9 record in the case, the probation officer's report, other reports,  
10 including reports received pursuant to Section 1203.03, and  
11 statements in aggravation or mitigation submitted by the  
12 prosecution, the defendant, or the victim, or the family of the victim  
13 if the victim is deceased, and any further evidence introduced at  
14 the sentencing hearing. The court shall set forth on the record the  
15 facts and reasons for imposing the upper or lower term. The court  
16 may not impose an upper term by using the fact of any  
17 enhancement upon which sentence is imposed under any provision  
18 of law. A term of imprisonment shall not be specified if imposition  
19 of sentence is suspended.

20 (c) The court shall state the reasons for its sentence choice on  
21 the record at the time of sentencing. The court shall also inform  
22 the defendant that as part of the sentence after expiration of the  
23 term he or she may be on parole for a period as provided in Section  
24 3000.

25 (d) (1) When a defendant subject to this section or subdivision  
26 (b) of Section 1168 has been sentenced to be imprisoned in the  
27 state prison and has been committed to the custody of the secretary,  
28 the court may, within 120 days of the date of commitment on its  
29 own motion, or at any time upon the recommendation of the  
30 secretary or the Board of Parole Hearings, recall the sentence and  
31 commitment previously ordered and resentence the defendant in  
32 the same manner as if he or she had not previously been sentenced,  
33 provided the new sentence, if any, is no greater than the initial  
34 sentence. The court resentencing under this subdivision shall apply  
35 the sentencing rules of the Judicial Council so as to eliminate  
36 disparity of sentences and to promote uniformity of sentencing.  
37 Credit shall be given for time served.

38 (2) (A) (i) When a defendant who was under 18 years of age  
39 at the time of the commission of the offense for which the  
40 defendant was sentenced to imprisonment for life without the

1 possibility of parole has served at least 15 years of that sentence,  
2 the defendant may submit to the sentencing court a petition for  
3 recall and resentencing.

4 (ii) Notwithstanding clause (i), this paragraph shall not apply  
5 to defendants sentenced to life without parole for an offense where  
6 the defendant tortured, as described in Section 206, his or her  
7 victim or the victim was a public safety official, including any law  
8 enforcement personnel mentioned in Chapter 4.5 (commencing  
9 with Section 830) of Title 3, or any firefighter as described in  
10 Section 245.1, as well as any other officer in any segment of law  
11 enforcement who is employed by the federal government, the state,  
12 or any of its political subdivisions.

13 (B) The defendant shall file the original petition with the  
14 sentencing court. A copy of the petition shall be served on the  
15 agency that prosecuted the case. The petition shall include the  
16 defendant's statement that he or she was under 18 years of age at  
17 the time of the crime and was sentenced to life in prison without  
18 the possibility of parole, the defendant's statement describing his  
19 or her remorse and work towards rehabilitation, and the defendant's  
20 statement that one of the following is true:

21 (i) The defendant was convicted pursuant to felony murder or  
22 aiding and abetting murder provisions of law.

23 (ii) The defendant does not have juvenile felony adjudications  
24 for assault or other felony crimes with a significant potential for  
25 personal harm to victims prior to the offense for which the sentence  
26 is being considered for recall.

27 (iii) The defendant committed the offense with at least one adult  
28 codefendant.

29 (iv) The defendant has performed acts that tend to indicate  
30 rehabilitation or the potential for rehabilitation, including, but not  
31 limited to, availing himself or herself of rehabilitative, educational,  
32 or vocational programs, if those programs have been available at  
33 his or her classification level and facility, using self-study for  
34 self-improvement, or showing evidence of remorse.

35 (C) If any of the information required in subparagraph (B) is  
36 missing from the petition, or if proof of service on the prosecuting  
37 agency is not provided, the court shall return the petition to the  
38 defendant and advise the defendant that the matter cannot be  
39 considered without the missing information.

1 (D) A reply to the petition, if any, shall be filed with the court  
2 within 60 days of the date on which the prosecuting agency was  
3 served with the petition, unless a continuance is granted for good  
4 cause.

5 (E) If the court finds by a preponderance of the evidence that  
6 the statements in the petition are true, the court shall hold a hearing  
7 to consider whether to recall the sentence and commitment  
8 previously ordered and to resentence the defendant in the same  
9 manner as if the defendant had not previously been sentenced,  
10 provided that the new sentence, if any, is not greater than the initial  
11 sentence. Victims, or victim family members if the victim is  
12 deceased, shall retain the rights to participate in the hearing.

13 (F) The factors that the court may consider when determining  
14 whether to recall and resentence include, but are not limited to,  
15 the following:

16 (i) The defendant was convicted pursuant to felony murder or  
17 aiding and abetting murder provisions of law.

18 (ii) The defendant does not have juvenile felony adjudications  
19 for assault or other felony crimes with a significant potential for  
20 personal harm to victims prior to the offense for which the sentence  
21 is being considered for recall.

22 (iii) The defendant committed the offense with at least one adult  
23 codefendant.

24 (iv) Prior to the offense for which the sentence is being  
25 considered for recall, the defendant had insufficient adult support  
26 or supervision and had suffered from psychological or physical  
27 trauma, or significant stress.

28 (v) The defendant suffers from cognitive limitations due to  
29 mental illness, developmental disabilities, or other factors that did  
30 not constitute a defense, but influenced the defendant's  
31 involvement in the offense.

32 (vi) The defendant has performed acts that tend to indicate  
33 rehabilitation or the potential for rehabilitation, including, but not  
34 limited to, availing himself or herself of rehabilitative, educational,  
35 or vocational programs, if those programs have been available at  
36 his or her classification level and facility, using self-study for  
37 self-improvement, or showing evidence of remorse.

38 (vii) The defendant has maintained family ties or connections  
39 with others through letter writing, calls, or visits, or has eliminated

1 contact with individuals outside of prison who are currently  
2 involved with crime.

3 (viii) The defendant has had no disciplinary actions for violent  
4 activities in the last five years in which the defendant was  
5 determined to be the aggressor.

6 (G) The court shall have the discretion to recall the sentence  
7 and commitment previously ordered and to resentence the  
8 defendant in the same manner as if the defendant had not  
9 previously been sentenced, provided that the new sentence, if any,  
10 is not greater than the initial sentence. The discretion of the court  
11 shall be exercised in consideration of the criteria in subparagraph  
12 (B). Victims, or victim family members if the victim is deceased,  
13 shall be notified of the resentencing hearing and shall retain their  
14 rights to participate in the hearing.

15 (H) If the sentence is not recalled, the defendant may submit  
16 another petition for recall and resentencing to the sentencing court  
17 when the defendant has been committed to the custody of the  
18 department for at least 20 years. If recall and resentencing is not  
19 granted under that petition, the defendant may file another petition  
20 after having served 24 years. The final petition may be submitted,  
21 and the response to that petition shall be determined, during the  
22 25th year of the defendant's sentence.

23 (I) In addition to the criteria in subparagraph (F), the court may  
24 consider any other criteria that the court deems relevant to its  
25 decision, so long as the court identifies them on the record,  
26 provides a statement of reasons for adopting them, and states why  
27 the defendant does or does not satisfy the criteria.

28 (J) This subdivision shall have retroactive application.

29 (e) (1) Notwithstanding any other law and consistent with  
30 paragraph (1) of subdivision (a), if the secretary or the Board of  
31 Parole Hearings or both determine that a prisoner satisfies the  
32 criteria set forth in paragraph (2), the secretary or the board may  
33 recommend to the court that the prisoner's sentence be recalled.

34 (2) (A) The court shall have the discretion to resentence or  
35 recall if the court finds that the facts described in clauses (i) and  
36 (ii) or clauses (ii) and (iii) exist:

37 (i) The prisoner is terminally ill with an incurable condition  
38 caused by an illness or disease that would produce death within  
39 six months, as determined by a physician employed by the  
40 department.



1 (ii) The conditions under which the prisoner would be released  
2 or receive treatment do not pose a threat to public safety.

3 (iii) The prisoner is permanently medically incapacitated with  
4 a medical condition that renders him or her permanently unable  
5 to perform activities of basic daily living, and results in the prisoner  
6 requiring 24-hour total care, including, but not limited to, coma,  
7 persistent vegetative state, brain death, ventilator-dependency, loss  
8 of control of muscular or neurological function, and that  
9 incapacitation did not exist at the time of the original sentencing.

10 (B) This subdivision does not apply to the following:

11 (i) A prisoner sentenced to death or a term of life without the  
12 possibility of parole.

13 (ii) (I) A prisoner who was convicted of *first degree* murder if  
14 the victim was a peace officer, as defined in Section 830.1, 830.2,  
15 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,  
16 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed  
17 while engaged in the performance of his or her duties, and the  
18 individual knew, or reasonably should have known, that the victim  
19 was a peace officer engaged in the performance of his or her duties.

20 (II) The victim was a peace officer, as defined in any of the  
21 sections enumerated in subclause (I), or had been a peace officer,  
22 as defined in any of those sections, and was intentionally murdered  
23 in retaliation for the performance of his or her official duties.

24 (III) If the court determines that the application of this clause  
25 violates the ex post facto clauses of the United States Constitution  
26 or the California Constitution, the court shall only enforce its  
27 provisions prospectively.

28 (C) The Board of Parole Hearings shall make findings pursuant  
29 to this subdivision before making a recommendation for resentence  
30 or recall to the court.

31 (3) Within 10 days of receipt of a positive recommendation by  
32 the secretary or the board, the court shall hold a hearing to consider  
33 whether the prisoner's sentence should be recalled.

34 (4) Any physician employed by the department who determines  
35 that a prisoner has six months or less to live shall notify the chief  
36 medical officer of the prognosis. If the chief medical officer  
37 concurs with the prognosis, he or she shall notify the warden.  
38 Within 48 hours of receiving notification, the warden or the  
39 warden's representative shall notify the prisoner of the recall and  
40 resentencing procedures, and shall arrange for the prisoner to

1 designate a family member or other outside agent to be notified  
2 as to the prisoner's medical condition and prognosis, and as to the  
3 recall and resentencing procedures. If the inmate is deemed  
4 mentally unfit, the warden or the warden's representative shall  
5 contact the inmate's emergency contact and provide the information  
6 described in paragraph (2).

7 (5) The warden or the warden's representative shall provide the  
8 prisoner and his or her family member, agent, or emergency  
9 contact, as described in paragraph (4), updated information  
10 throughout the recall and resentencing process with regard to the  
11 prisoner's medical condition and the status of the prisoner's recall  
12 and resentencing proceedings.

13 (6) Notwithstanding any other provisions of this section, the  
14 prisoner or his or her family member or designee may  
15 independently request consideration for recall and resentencing  
16 by contacting the chief medical officer at the prison or the  
17 secretary. Upon receipt of the request, the chief medical officer  
18 and the warden or the warden's representative shall follow the  
19 procedures described in paragraph (4). If the secretary determines  
20 that the prisoner satisfies the criteria set forth in paragraph (2), the  
21 secretary or board may recommend to the court that the prisoner's  
22 sentence be recalled. The secretary shall submit a recommendation  
23 for release within 30 days in the case of inmates sentenced to  
24 determinate terms and, in the case of inmates sentenced to  
25 indeterminate terms, the secretary shall make a recommendation  
26 to the Board of Parole Hearings with respect to the inmates who  
27 have applied under this section. The board shall consider this  
28 information and make an independent judgment pursuant to  
29 paragraph (2) and make findings related thereto before rejecting  
30 the request or making a recommendation to the court. This action  
31 shall be taken at the next lawfully noticed board meeting.

32 (7) Any recommendation for recall submitted to the court by  
33 the secretary or the Board of Parole Hearings shall include one or  
34 more medical evaluations, a postrelease plan, and findings pursuant  
35 to paragraph (2).

36 (8) If possible, the matter shall be heard before the same judge  
37 of the court who sentenced the prisoner.

38 (9) If the court grants the recall and resentencing application,  
39 the prisoner shall be released by the department within 48 hours  
40 of receipt of the court's order, unless a longer time period is agreed

1 to by the inmate. At the time of release, the warden or the warden's  
2 representative shall ensure that the prisoner has each of the  
3 following in his or her possession: a discharge medical summary,  
4 full medical records, state identification, parole medications, and  
5 all property belonging to the prisoner. After discharge, any  
6 additional records shall be sent to the prisoner's forwarding  
7 address.

8 (10) The secretary shall issue a directive to medical and  
9 correctional staff employed by the department that details the  
10 guidelines and procedures for initiating a recall and resentencing  
11 procedure. The directive shall clearly state that any prisoner who  
12 is given a prognosis of six months or less to live is eligible for  
13 recall and resentencing consideration, and that recall and  
14 resentencing procedures shall be initiated upon that prognosis.

15 (f) Notwithstanding any other provision of this section, for  
16 purposes of paragraph (3) of subdivision (h), any allegation that  
17 a defendant is eligible for state prison due to a prior or current  
18 conviction, sentence enhancement, or because he or she is required  
19 to register as a sex offender shall not be subject to dismissal  
20 pursuant to Section 1385.

21 (g) A sentence to state prison for a determinate term for which  
22 only one term is specified, is a sentence to state prison under this  
23 section.

24 (h) (1) Except as provided in paragraph (3), a felony punishable  
25 pursuant to this subdivision where the term is not specified in the  
26 underlying offense shall be punishable by a term of imprisonment  
27 in a county jail for 16 months, or two or three years.

28 (2) Except as provided in paragraph (3), a felony punishable  
29 pursuant to this subdivision shall be punishable by imprisonment  
30 in a county jail for the term described in the underlying offense.

31 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
32 (A) has a prior or current felony conviction for a serious felony  
33 described in subdivision (c) of Section 1192.7 or a prior or current  
34 conviction for a violent felony described in subdivision (c) of  
35 Section 667.5, (B) has a prior felony conviction in another  
36 jurisdiction for an offense that has all the elements of a serious  
37 felony described in subdivision (c) of Section 1192.7 or a violent  
38 felony described in subdivision (c) of Section 667.5, (C) is required  
39 to register as a sex offender pursuant to Chapter 5.5 (commencing  
40 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime

1 and as part of the sentence an enhancement pursuant to Section  
2 186.11 is imposed, an executed sentence for a felony punishable  
3 pursuant to this subdivision shall be served in state prison.

4 (4) Nothing in this subdivision shall be construed to prevent  
5 other dispositions authorized by law, including pretrial diversion,  
6 deferred entry of judgment, or an order granting probation pursuant  
7 to Section 1203.1.

8 (5) The court, when imposing a sentence pursuant to paragraph  
9 (1) or (2) of this subdivision, may commit the defendant to a county  
10 jail as follows:

11 (A) For a full term in custody as determined in accordance with  
12 the applicable sentencing law.

13 (B) (i) For a term as determined in accordance with the  
14 applicable sentencing law, but suspend execution of a concluding  
15 portion of the term selected in the court's discretion, during which  
16 time the defendant shall be supervised by the county probation  
17 officer in accordance with the terms, conditions, and procedures  
18 generally applicable to persons placed on probation, for the  
19 remaining unserved portion of the sentence imposed by the court.  
20 The period of supervision shall be mandatory, and may not be  
21 earlier terminated except by court order. Any proceeding to revoke  
22 or modify mandatory supervision under this subparagraph shall  
23 be conducted pursuant to either subdivisions (a) and (b) of Section  
24 1203.2 or Section 1203.3. During the period when the defendant  
25 is under such supervision, unless in actual custody related to the  
26 sentence imposed by the court, the defendant shall be entitled to  
27 only actual time credit against the term of imprisonment imposed  
28 by the court. Any time period which is suspended because a person  
29 has absconded shall not be credited toward the period of  
30 supervision.

31 (ii) The portion of a defendant's sentenced term during which  
32 time he or she is supervised by the county probation officer  
33 pursuant to this subparagraph shall be known as mandatory  
34 supervision, and shall begin upon release from custody.

35 (6) The sentencing changes made by the act that added this  
36 subdivision shall be applied prospectively to any person sentenced  
37 on or after October 1, 2011.

38 (i) This section shall become operative on January 1, 2017.

39 SEC. 3. Section 3550 of the Penal Code is amended to read:

1 3550. (a) Notwithstanding any other provision of law, except  
2 as provided in subdivision (b), if the head physician of an  
3 institution in which a prisoner is incarcerated determines, as  
4 provided in this section, that the prisoner is permanently medically  
5 incapacitated with a medical condition that renders him or her  
6 permanently unable to perform activities of basic daily living, and  
7 results in the prisoner requiring 24-hour care, and that  
8 incapacitation did not exist at the time of sentencing, the prisoner  
9 shall be granted medical parole if the Board of Parole Hearings  
10 determines that the conditions under which he or she would be  
11 released would not reasonably pose a threat to public safety.

12 (b) This section does not alter or diminish the rights conferred  
13 under the Victims' Bill of Rights Act of 2008 (Marsy's Law).  
14 Subdivision (a) does not apply to any of the following:

15 (1) A prisoner sentenced to death or life in prison without  
16 possibility of parole.

17 (2) A prisoner who is serving a sentence for which parole,  
18 pursuant to subdivision (a), is prohibited by any initiative statute.

19 (3) (A) A prisoner who was convicted of *first degree* murder  
20 if the victim was a peace officer, as defined in Section 830.1, 830.2,  
21 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,  
22 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed  
23 while engaged in the performance of his or her duties, and the  
24 individual knew, or reasonably should have known, that the victim  
25 was a peace officer engaged in the performance of his or her duties.

26 (B) The victim was a peace officer, as defined in any of the  
27 sections enumerated in subparagraph (A), or had been a peace  
28 officer, as defined in any of those sections, and was intentionally  
29 murdered in retaliation for the performance of his or her official  
30 duties.

31 (C) If the court determines that the application of this paragraph  
32 violates the ex post facto clauses of the United States Constitution  
33 or the California Constitution, the court shall only enforce its  
34 provisions prospectively.

35 (c) When a physician employed by the Department of  
36 Corrections and Rehabilitation who is the primary care provider  
37 for a prisoner identifies a prisoner that he or she believes meets  
38 the medical criteria for medical parole specified in subdivision (a),  
39 the primary care physician shall recommend to the head physician  
40 of the institution where the prisoner is located that the prisoner be

1 referred to the Board of Parole Hearings for consideration for  
2 medical parole. Within 30 days of receiving that recommendation,  
3 if the head physician of the institution concurs in the  
4 recommendation of the primary care physician, he or she shall  
5 refer the matter to the Board of Parole Hearings using a  
6 standardized form and format developed by the department, and  
7 if the head physician of the institution does not concur in the  
8 recommendation, he or she shall provide the primary care physician  
9 with a written explanation of the reasons for denying the referral.

10 (d) Notwithstanding any other provisions of this section, the  
11 prisoner or his or her family member or designee may  
12 independently request consideration for medical parole by  
13 contacting the head physician at the prison or the department.  
14 Within 30 days of receiving the request, the head physician of the  
15 institution shall, in consultation with the prisoner's primary care  
16 physician, make a determination regarding whether the prisoner  
17 meets the criteria for medical parole as specified in subdivision  
18 (a) and, if the head physician of the institution determines that the  
19 prisoner satisfies the criteria set forth in subdivision (a), he or she  
20 shall refer the matter to the Board of Parole Hearings using a  
21 standardized form and format developed by the department. If the  
22 head physician of the institution does not concur in the  
23 recommendation, he or she shall provide the prisoner or his or her  
24 family member or designee with a written explanation of the  
25 reasons for denying the application.

26 (e) The Department of Corrections and Rehabilitation shall  
27 complete parole plans for inmates referred to the Board of Parole  
28 Hearings for medical parole consideration. The parole plans shall  
29 include, but not be limited to, the inmate's plan for residency and  
30 medical care.

31 (f) Notwithstanding any other law, medical parole hearings shall  
32 be conducted by two-person panels consisting of at least one  
33 commissioner. In the event of a tie vote, the matter shall be referred  
34 to the full board for a decision. Medical parole hearings may be  
35 heard in absentia.

36 (g) Upon receiving a recommendation from the head physician  
37 of the institution where a prisoner is located for the prisoner to be  
38 granted medical parole pursuant to subdivision (c) or (d), the board,  
39 as specified in subdivision (f), shall make an independent judgment  
40 regarding whether the conditions under which the inmate would

1 be released pose a reasonable threat to public safety, and make  
2 written findings related thereto.

3 (h) Notwithstanding any other provision of law, the board or  
4 the Division of Adult Parole Operations shall have the authority  
5 to impose any reasonable conditions on prisoners subject to medical  
6 parole supervision pursuant to subdivision (a), including, but not  
7 limited to, the requirement that the parolee submit to electronic  
8 monitoring. As a further condition of medical parole, pursuant to  
9 subdivision (a), the parolee may be required to submit to an  
10 examination by a physician selected by the board for the purpose  
11 of diagnosing the parolee's current medical condition. In the event  
12 such an examination takes place, a report of the examination and  
13 diagnosis shall be submitted to the board by the examining  
14 physician. If the board determines, based on that medical  
15 examination, that the person's medical condition has improved to  
16 the extent that the person no longer qualifies for medical parole,  
17 the board shall return the person to the custody of the department.

18 (1) Notwithstanding any other provision of law establishing  
19 maximum periods for parole, a prisoner sentenced to a determinate  
20 term who is placed on medical parole supervision prior to the  
21 earliest possible release date and who remains eligible for medical  
22 parole, shall remain on medical parole, pursuant to subdivision  
23 (a), until that earliest possible release date, at which time the  
24 parolee shall commence serving that period of parole provided by,  
25 and under the provisions of, Chapter 8 (commencing with Section  
26 3000) of Title 1.

27 (2) Notwithstanding any other provisions of law establishing  
28 maximum periods for parole, a prisoner sentenced to an  
29 indeterminate term who is placed on medical parole supervision  
30 prior to the prisoner's minimum eligible parole date, and who  
31 remains eligible for medical parole, shall remain on medical parole  
32 pursuant to subdivision (a) until that minimum eligible parole date,  
33 at which time the parolee shall be eligible for parole consideration  
34 under all other provisions of Chapter 8 (commencing with Section  
35 3000) of Title 1.

36 (i) The Department of Corrections and Rehabilitation shall, at  
37 the time a prisoner is placed on medical parole supervision pursuant  
38 to subdivision (a), ensure that the prisoner has applied for any  
39 federal entitlement programs for which the prisoner is eligible,  
40 and has in his or her possession a discharge medical summary, full

1 medical records, parole medications, and all property belonging  
2 to the prisoner that was under the control of the department. Any  
3 additional records shall be sent to the prisoner's forwarding address  
4 after release to health care-related parole supervision.

5 (j) The provisions for medical parole set forth in this title shall  
6 not affect an inmate's eligibility for any other form of parole or  
7 release provided by law.

8 (k) (1) Notwithstanding any other provision of law, the  
9 Department of Corrections and Rehabilitation shall give notice to  
10 the county of commitment and the proposed county of release, if  
11 that county is different than the county of commitment, of any  
12 medical parole hearing as described in subdivision (f), and of any  
13 medical parole release as described in subdivision (g).

14 (2) Notice shall be made at least 30 days, or as soon as feasible,  
15 prior to the time any medical parole hearing or medical parole  
16 release is scheduled for an inmate receiving medical parole  
17 consideration, regardless of whether the inmate is sentenced either  
18 determinately or indeterminately.